

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of Petition of Autotel Pursuant)
to Section 252(e)(5) of the Communications)
Act for Preemption of the Jurisdiction of the)
Public Utilities Commission of Nevada)
Regarding Arbitration of an Interconnection)
Agreement with SBC Nevada)

WC DOCKET NO. 04-311

PUBLIC UTILITIES COMMISSION OF NEVADA'S COMMENTS REGARDING AUTOTEL'S PETITION FOR PREEMPTION

COMES NOW the Public Utilities Commission of Nevada ("PUCN") and pursuant to the pleading cycle established by the Federal Communications Commission on August 9, 2004 hereby files its Comments regarding the Petition for Preemption filed by Autotel. The PUCN does not oppose Autotel's Petition for Preemption, however, the PUCN would like to offer some comments on the Petition.

On August 14, 2002 Autotel filed a Petition seeking arbitration of an Interconnection Agreement with Nevada Bell Telephone Company, d/b/a SBC Nevada ("SBC Nevada"). On September 13, 2002 SBC Nevada filed a Motion to Compel Autotel's Responses to Data Requests. Both parties agreed to postpone seeking a decision on the Motion to Compel until such time as a prehearing conference was held.

On October 30, 2002, Autotel and SBC Nevada filed a letter requesting that the PUCN hold the Petition in abeyance pending negotiations. Negotiations continued between the parties until February 6, 2004, when Autotel filed a letter requesting the PUCN's assistance to resolve its negotiations with SBC Nevada.

On February 10, 2004, SBC Nevada filed a request for a prehearing conference at which among other things, its Motion to Compel could be considered. At the prehearing conference held on April 20, 2004, the Presiding Officer granted SBC Nevada's Motion to Compel and ordered Autotel to respond to SBC Nevada's Data Request.

On April 30, 2004, SBC Nevada filed a Notice of Taking of Deposition of Richard L. Oberdorfer on May 12, 2004 in Portland, Oregon. SBC Nevada filed a Renewed Motion to Compel Autotel to Produce Requested Documents on May 10, 2004.

On May 17, 2004 SBC Nevada filed a Motion to Compel Autotel to Answer Deposition Questions and Data Requests, Motion to Compel Autotel to Resume the Deposition of Richard L. Oberdorfer in Reno, Nevada, and Supplement Information in Support of SBC Nevada's Renewed Motion to Compel Autotel to Produce Requested Documents. In the Regulatory Operations Staff's ("Staff") Response filed May 17, 2004, Staff stated that it supported SBC Nevada's Motion to Compel and that after two years of proceedings Staff lacked the fundamental facts underlying the issues on which Autotel had requested arbitration. On June 1, 2004 the PUCN issued an order granting SBC Nevada's second motion to compel.

On June 7, 2004 SBC Nevada filed a Motion to Dismiss and Motion to Compel Autotel's Answer to SBC Nevada's Second Data Request; Staff supported SBC Nevada's Motion. On June 15, 2004 Autotel filed its Response out of time.

On July 19, 2004 the PUCN entered an Order in Docket No. 02-8016 which granted SBC Nevada's Motion to Dismiss and dismissed Autotel's Petition for Arbitration without prejudice. In the PUCN's Order (Attached to Autotel's Petition for Preemption as Exhibit C) the PUCN remarked on Autotel's failure to respond to data requests:

The Presiding Officer ordered Autotel to respond to Data Requests from SBC Nevada on two occasions. The Presiding Officer first ordered Autotel to 'provide simple, direct answers to the data requests...and enter into [a protective agreement].' (Prehearing Conference Tr. at 26.) On June 1, 2004, following a Second Motion to Compel from SBC Nevada, the Presiding Officer issued an Order finding that Autotel failed to respond to SBC Nevada's Data Requests and questions at the May 12, 2004 Deposition of Richard L. Oberdorfer. The Presiding Officer's Order instructed Autotel to respond to the Data Requests and deposition questions by June 4, 2004.

(PUCN's July 19, 2004 Order, paragraph 33.) As of July 19, 2004, Autotel had yet to comply with the Presiding Officer's Orders nor had Autotel provided the PUCN with an explanation as to why it had not complied with the Orders.

As provided in 47 U.S.C. § 252(b)(5):

The refusal of any other party to the negotiation. . .to cooperate with the State commission in carrying out its function as an arbitrator. . .shall be considered a failure to negotiate in good faith.

Autotel's failure to negotiate in good faith by not complying with the Presiding Officer's Orders or providing any explanation as to its failure to comply, gave the PUCN little choice but to take the action it did and dismiss Autotel's Petition for Arbitration.

WHEREFORE, the PUCN respectfully requests that the Federal Communications Commission take notice of its comments.

Respectfully submitted,

/s/ Marguerite E. Russell

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Dated: August 11, 2004

CERTIFICATE OF SERVICE

I, Kelly J. Chouinard, certify that a copy of the foregoing Public Utilities Commission Of Nevada's Comments Regarding Autotel's Petition For Preemption in WC Docket No. 04-311 was served on this 11th day of August, 2004 by first-class, U.S. Mail, postage prepaid to the following persons:

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